## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION NO. 3:19-CV-60-GCM

DERECK CROUTCH,	)
Plaintiff,	)
vs.	ORDER
NANCY A. BERRYHILL, Acting Commissioner	)
of Social Security,	)
Defendant.	)

THIS MATTER is before the Court on Defendant's Motion for Summary Judgement, or, alternatively, Motion to Dismiss (Doc. No. 12). Defendant argues that Plaintiff has failed to prosecute her case by not filing a motion for summary judgment in compliance with the Court's Scheduling Order. (Doc. No. 12). The Court Ordered Plaintiff to file a motion for summary judgment by July 8, 2019. (Text-Only Order entered May 7, 2019). On July 9, 2019, after Plaintiff missed that deadline, the Court then resent that Order by mail to Plaintiff. (Text-Only Order entered July 9, 2019). Plaintiff still did not file a motion for summary judgment. Thus, on March 19, 2020, the Court ordered Plaintiff to provide a motion for summary judgment by March 30, 2020 and warned Plaintiff that if she failed to do so, the Court would dismiss this case under Rule 41(b). (Doc. No. 15). Plaintiff failed to meet that deadline as well.

Federal Rule of Civil Procedure 41(b) permits a Court to dismiss a case where "the plaintiff fails to prosecute or to comply with [the] rules or a court order." The Fourth Circuit has "identified four criteria that guide a district court's discretion in dismissing a case under Rule 41(b). *Attkisson v. Holder*, 925 F.3d 606, 625 (4th Cir. 2019). Such an exercise should weigh: '(1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the

presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the

effectiveness of sanctions less drastic than dismissal.' Id. (citation omitted).

Here, Plaintiff is proceeding pro se and, therefore, bears the entire responsibility of

prosecuting the case. See Feagin v. Blockbuster, Inc., 3:09-cv-00532-RJC, 2016 WL 3148390, at

\*2 (W.D.N.C. June 2, 2016). Further, Defendant has now waited more than eight months for

Plaintiff to file a motion for summary judgment to resolve this appeal from the Commissioner of

Social Security's decision. During that time, Plaintiff was able to file a threadbare addendum (Doc.

No. 14) but still declined to comply with the Court's order, illustrating that the drawn-out, eight-

month delay was deliberate. Further, it is now clear that no less drastic sanction than dismissal

would be effective. The Court informed Plaintiff that if she did not file a motion for summary

judgment, this case would be dismissed—a warning that Plaintiff disregarded. Thus, this case is

DISMISSED.

SO ORDERED.

Signed: March 31, 2020

Graham C. Mullen

United States District Judge